

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0563**  
**CONSIDERATION OF FACTORS PURSUANT TO CWC SECTION 13350**

Actions imposing Administrative Civil Liability for violations of California Water Code (CWC) section 13350 must consider the factors mentioned in CWC section 13327, which states: *"In determining the amount of civil liability, the regional board...shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."*

In preparing the Administrative Civil Liability Complaint, Board staff considered the following:

**Nature and Extent of Violations:** Stanislaus Almond Ranch and Lake Road Grizzly Ranch (hereafter collectively called the Property) are a 1,000-acre, contiguous almond orchard located in Stanislaus County. The Property was used as dry land pasture until 2007, when it was graded in preparation for planting almonds. The topography is rolling hills with slopes of 0 to 75 percent. The Property drains to an unnamed tributary to Peaslee Creek, which is a tributary to the Tuolumne River.

Stanislaus Almond Ranch, LLC, and Lake Road Grizzly Ranch, LLC, (hereafter the Discharger) violated Section A.10 of Attachment B to the Irrigated Lands Conditional Waiver (Order R5-2006-0053), by failing to implement adequate best management practices (BMPs) for erosion and sediment control, which resulted in the discharge of sediment-laden storm water from the Property. The Discharger also violated the Irrigated Lands Conditional Waiver by causing or contributing to exceedances of Basin Plan Water Quality Objectives in the Tuolumne River on 23, 25 and 28 January 2008, and 25 February 2008, and in Peaslee Creek on 5 May 2009.

The Discharger also violated Cleanup and Abatement Order R5-2008-0701 by, as of 10 March 2008, failing to immediately take action to cease the discharge of sediment and other wastes to waters of the state, including but not limited to Peaslee Creek and its tributaries, and to the Tuolumne River.

**Circumstances:** During 2007, dry land pasture at the Property was disked and the land was prepared for planting almond orchards. Minimal erosion and sediment BMPs were employed, which resulted in the aforementioned violations in 2008 and 2009.

**Gravity:** In response to being notified of significant discharges of sediment-laden storm water from the Property in February 2008, the Central Valley Water Board issued Cleanup and Abatement Order R5-2008-0701. Despite the fact that the Discharger was notified of the continuing violations and the need for additional erosion and sediment BMPs, the Discharger failed to implement effective BMP improvements. This failure

resulted in significant discharges of sediment-laden storm water. These waste discharges caused or contributed to exceedances of Basin Plan Water Quality Objectives in the Tuolumne River and Peaslee Creek.

The Peaslee Creek outfall flows into a section of the Tuolumne River that has been designated under Fish and Game Code 1505 as a spawning area for several fish species. This section of the river has also been identified as winter steelhead and Chinook habitat.

**Toxicity:** Turbidity measurements were taken from a tributary to Peaslee Creek downstream of the Property, from Peaslee Creek, and from the Tuolumne River. Turbidity measurements taken from these sources are presented in the table below.

Date <sup>1</sup>	Turbidity in nephelometric units (NTU)				
	Discharge from Property <sup>2</sup>	Peaslee Creek Upstream <sup>3</sup>	Peaslee Creek Downstream <sup>4</sup>	Tuolumne River Upstream	Tuolumne River Downstream <sup>7</sup>
1/23/08	11,200	167	--	16 <sup>5</sup>	965
1/25/08	976	--	--	9 <sup>5</sup>	143
1/28/08	2,240	127	--	12 <sup>5</sup>	1,614
2/25/08	2,600	92	500	18 <sup>5</sup>	453
1/25/09	1,200	--	--	2 <sup>6</sup>	--
1/26/09	781	--	--	4 <sup>6</sup>	--
2/14/09	1,100	--	--	--	--
5/5/09	6,900	84	2,300	1 <sup>6</sup>	--

<sup>1</sup> The shaded areas show dates for which enough turbidity data was collected to show a violation of Basin Plan Water Quality Objectives.

<sup>2</sup> This discharge is a tributary to Peaslee Creek that appears to originate on the Property.

<sup>3</sup> Measured at the Lake Road crossing upstream of the discharge from the Property.

<sup>4</sup> Measured between discharge from Property and the Peaslee Creek discharge to the Tuolumne River.

<sup>5</sup> Measured at Highway 132 (Basso Bridge), about two miles east of the Peaslee Creek confluence.

<sup>6</sup> Measured just upstream of Peaslee Creek confluence.

<sup>7</sup> Measured at Turlock Lake State Rec. Area, about three miles west of the Peaslee Creek confluence.

The highly turbid runoff documented above reduced habitat for aquatic life and caused deleterious effects due to physical impacts. The loss of habitat and physical impacts are discussed in the May 2009 stream assessment prepared by Department of Fish & Game (DFG) staff (see Attachment H of the Complaint).

**Susceptibility of the Discharge to Cleanup:** Once the turbid runoff entered receiving waters, there was no practical way to clean up the sediment to avoid further impacts to water quality or beneficial uses.

**Degree of Culpability:** Having obtained coverage under the Irrigated Lands Conditional Waiver in August 2007, the Discharger was responsible for being aware of the Waiver requirements. The Discharger chose to mass-grade the majority of approximately 1,000-acres of former dry land pasture without installing adequate erosion and sediment control BMPs.

In response to waste discharges from the Property in January and February 2008, the Central Valley Water Board issued Cleanup and Abatement Order R5-2008-0701 to the Discharger, thus notifying the Discharger to the waste discharges, the threat to water quality, and the need for effective erosion and sediment control BMPs. Despite issuance of the Cleanup and Abatement Order, additional waste discharges from the Property occurred in March 2009. In response to these waste discharges, Board staff and DFG staff met with the Discharger's representatives at the Property on 25 March 2009 and discussed the need to stabilize the Property and protect water quality in Peaslee Creek and the Tuolumne River. However, additional discharges occurred in May 2009.

**Degree of Cooperation:** The Discharger was friendly but unresponsive to Board staff regarding staff's urging for effective erosion and sediment control BMPs (and as supported by the Cleanup and Abatement Order from the Central Valley Water Board).

**Prior History of Violations:** Board staff is unaware of any violations committed by the Discharger other than those that began at the Property in January 2008.

**Economic Benefit:** Board staff estimates that the minimum cost to implement adequate BMPs for stabilization of disturbed slopes, check dams, properly designed and installed storm water impoundments, and possible treatment of storm water to remove suspended solids to range from \$160,000 to \$400,000 for the 2008 and 2009 wet seasons.

#### **Other Matters as Justice May Require**

a. **Staff Costs:** Water Board staff spent a total of 160 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$24,000 based on a rate of \$150 per hour.

b. **Ability of the Discharger to Pay:**

The Discharger's parcels that caused the waste discharges totaled about 985 acres; however, the Discharger also owns adjacent parcels/almond orchards, bringing the total acreage to an estimated 4,962 acres. According to Stanislaus County tax assessor's records, these parcels have an assessed value in excess of \$12,000,000.

Revenue generation through almond production also affects the Discharger's ability to pay. According to a UC Cooperative Extension (*Sample Costs to Establish an Almond Orchard and Produce Almonds* [2008]), the net annual profit of almond orchards is typically \$196 per acre. Based on a production area of 4,962 acres, the Discharger is projected to make a profit of about \$972,552 per year once these orchards become fully productive (typically, four to five years to reach full production).

Based on the substantial land holdings of the Discharger and the estimated almond orchard profits, staff expects that the Discharger has the ability to pay the ACL Complaint.